

REMARKS**I. Overview**

Claims 1-20 are pending in the present application. Applicant respectfully requests reconsideration of the claims in view of the following remarks.

The issues raised by the Examiner in the current Office Action dated April 7, 2008 (Final Action) are as follows:

- Claims 1-3, 5-10, 13, 14, 17, 19 and 20 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over U.S. Patent No. 5,732,213 to Gessel (hereinafter “Gessel”) in view of U.S. Patent No. 5,027,343 to Chan *et al.* (hereinafter “Chan”); and
- Claims 4, 11, 15, 16 and 18 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Gessel in view of Chan in view of U.S. Patent No. 6,560,723 to Matsui (hereinafter “Matsui”).

Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the remarks presented herein.

II. Rejections in view of Gessel

Independent claims 1, 8 and 20 stand rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Gessel in view of Chan.

A. The Gessel reference

The Gessel patent is directed to a system and method for testing Open Systems Interface (OSI) layers 3 through 7 of a communication protocol. (Abstract). The Gessel system tests OSI layers 3-7 as they are used in a local area network (LAN) between a protocol simulator on one end and either a target telecommunications node or a target telecommunications system emulator on the other end. (Abstract). Gessel teaches that OSI layers 1 and 2 are frequently unaffected by new functions and services and, therefore, do not need to be tested. (Column 5, lines 5-8). As a result, the Gessel system removes the physical (layer 1) and data link (layer 2) protocol layers and provides for testing of just OSI layers 3-7. (Column 5, lines 13-27). In particular, layers 1 and 2 of the communication protocol are replaced with the TCP/IP protocol on a LAN. (Column 5, lines 23-30). Gessel teaches using an Internet socket for a UNIX application that simulates the

hardware of normal protocol layers 1 and 2 for the unit under test. (Column 7, lines 35-40). Gessel discloses several computer displays that are used to select components used in a test network and to monitor messages in the network. (Figures 10-16; col. 4, ln. 46 - col. 5, ln. 2). Gessel does not disclose a display that allows the user to select protocol layers, service access points, or communication data. The Gessel protocol tester and target telecommunication node are linked by the LAN instead of normal communication links for the protocol under test. Accordingly, layers 1 and 2 of the communication protocol under test do not exist and, therefore, are not available in the Gessel system.

B. The Chan reference

The Chan patent discloses a telecommunications system including an end-to-end ISDN test access system 21. (Col. 4, lns. 53-55). The test access system 21 includes a packet switching network and adaptor interfaces for a local site (i.e. tester) and a remote site (i.e. system under test). (Fig. 1; col. 4, lns. 55-60). Test access system 21 is inserted in place of an ISDN network between ISDN interfaces 27/28. (Fig. 1; col. 5, lns. 15-26). Accordingly, in Chan, the normal physical layer (OSI layer 1) of the network-under-test is replaced with test system 21. (Col. 5, lns. 37-44). Chan teaches rerouting normal ISDN traffic over X.25 access links using test system 21 to evaluate the processing of OSI layers 1-3 by the system under test at the remote site. (Col. 6, lns. 9-15). Chan teaches that the test access system 21 is necessary because - at the time of filing (July 1989) - there was usually no network to transport ISDN traffic between the test system and the remote system under test. (Col. 1, lns. 48-55). Chan does not teach or suggest using a protocol tester in which the user selects protocol layers, service access points, or communication data from a display.

C. Not obvious to combine the Gessel and Chan references

The Final Action states that it would have been obvious to combine the teachings of Chan into the method of Gessel “in order to identify and to prevent transmission errors in the setting of circuits and transmission equipment.” Applicant traverses this motivation for the proposed combination.

Gessel is clearly not interested in the operation of OSI layers 1 and 2 and explicitly teaches that layers 1 and 2 are not affected by the development of new functions and services.

(Col. 5, Ins. 5-9). The entire purpose of the Gessel patent is to replace the existing level 1 and 2 protocols with the TCP/IP protocol. (Col. 5, Ins. 22-29). Gessel removes the original layer 1 and 2 protocols by substituting a LAN network between the test components. (Col. 5, Ins. 26-36). Therefore, one of ordinary skill in the art having knowledge of the Gessel system would not be motivated to look for another teaching regarding OSI layers 1 and 2, because Gessel teaches that these layers do not need to be tested. Gessel teaches away from the modification suggested in the Final Action because such a modification adds features that are clearly labeled as unwanted in the Gessel disclosure.

D. The proposed combination fails to teach or suggest each and every element of the pending claims.

Both the Gessel and Chan references fail to teach or suggest a protocol tester in which the user selects protocol layers, service access points, or communication data from a display.

Claim 1 recites:

selecting a protocol layer . . . , the protocol layer **selected from a displayed list** of protocol layers that are capable of being emulated by the protocol tester . . . ;

selecting abstract communication interfaces . . . , the abstract communication interfaces **selected from a displayed list** of abstract communication interfaces associated with the selected protocol layer; . . . and

automatically setting up through the protocol tester the communication procedure on the basis of the selections made in the above selecting steps, with parameters for the abstract communications interfaces and the communication data **selecting steps being made graphically**.

(emphasis added).

Claim 8 recites:

means for displaying a list of protocol layers capable of being emulated by the protocol tester, . . . ;

means for displaying a list of abstract communication interfaces for the communication procedure, the list of abstract communication interfaces associated with the selected protocol layer to be emulated; . . . and

means for automatically setting up the communication procedure through the protocol tester on the basis of the selections of the various selecting means, with parameters for the abstract communication interfaces and the communication data **selecting means being made graphically**.

(emphasis added).

Claim 20 recites:

means for graphically selecting devices to be used in a communication procedure, a first being the protocol tester and a second device being an item under test;

means for displaying a list of protocol layers capable of being emulated by the protocol tester, . . . ;

means for graphically selecting a protocol layer to be emulated by the protocol tester for testing a specified protocol layer of the item under test;

means for displaying a list of service access points for the communication procedure, the list of service access points interfaces associated with the selected protocol layer;

means for graphically selecting service access points of the protocol layer to be emulated for the communication procedure;

means for graphically selecting communication data to be exchanged at the service access points, the communication data contained in description files . .

. . .

(emphasis added).

The Gessel and Chan references, which are used in the rejection of the independent claims, are directed to the set-up of a network or devices under test. On the other hand, the pending claims are directed to a protocol tester. Accordingly, the cited references fail to disclose each and every element of the pending claims.

The Gessel patent discloses a visual display of a network that allows selection of nodes to be tested. (Fig. 12; col. 10, lns. 43-58). However, Gessel does not teach or suggest that additional test parameters may be selected from a displayed list, such as a protocol layer, abstract communication interface, service access points, or communication data. Moreover, Gessel fails to teach or suggest that a displayed list of abstract communication interfaces or service access points interfaces are associated with a selected protocol layer.

As noted in the Amendment filed September 24, 2008, the Gessel reference does not teach or suggest displaying a list of abstract communication interfaces or a list of service access points and allowing a user to select abstract communication interfaces or a list of service access points for a communication procedure. Neither Office Action issued for the present application

specifically identified where the claimed display and selection limitations could be found in the cited references.

The Chan and Matsui references are not cited for these display or selection elements; however, these references also fail to teach or suggest the above-indicated elements of claims 1, 8 and 20.

Accordingly, the cited Gessel reference and the proposed combination of Gessel, Chan and/or Matsui fail to teach or suggest all of the elements of independent claims 1, 8, and 20. Applicant respectfully requests that the Examiner withdraw the current rejections and pass the claims to allowance.

Claims 2-7, and 9-19 depend from independent claims 1 and 8 and add further limitations. It is respectfully submitted that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations.

In view of the above, Applicant respectfully submits that this response complies with 37 C.F.R. § 1.116. Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicant's attorney at 972-732-1001 so that such issues may be resolved as expeditiously as possible. No fee is believed due in connection with this filing. However, should one be deemed due, the Commissioner is hereby authorized to charge, or credit any overpayment, Deposit Account No. 50-1065.

Respectfully submitted,

February 6, 2009
Date

/Michael J. Fogarty, III/
Michael J. Fogarty, III
Attorney for Applicant
Reg. No. 42,541

SLATER & MATSIL, L.L.P.
17950 Preston Rd., Suite 1000
Dallas, Texas 75252
Tel.: 972-732-1001
Fax: 972-732-9218